

AMNESTY INTERNATIONAL PUBLIC STATEMENT

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KURDISTAN REGION OF IRAQ: AUTHORITIES MUST END PROTESTS-RELATED REPRESSION

Authorities in the Kurdistan Region of Iraq (KR-I) must put an end to their ongoing crackdown of protests by way of arbitrary arrests and harassment, and they should immediately release those detained – including those already sentenced following unfair trials - in relation to their participation in protests or related activism or professional practice, Amnesty International said.

In mid-August 2020, widespread protests erupted in the KR-I, mainly in Sulaimaniyah, Duhok and Erbil, demanding an end to corruption, better public services, and the payment of overdue salaries of government employees. In the aftermath, authorities in the Kurdistan Regional Government (KRG) launched a mass campaign of arrests against activists, protesters and journalists covering the protests under the pretext of preserving “national security”.

According to lawyers and human rights workers interviewed by Amnesty International between March 2020 and April 2021, Kurdish security forces reportedly arrested over 100 individuals in Duhok governorate alone, and specifically in the Badinan area, northwest of the governorate.¹ Most individuals were released shortly after, but at least 30 remain in detention.

Between February and May 2021, Amnesty International conducted 21 interviews with victims, family members of detained individuals, lawyers, human rights workers, and journalists in the KR-I, and reviewed official court documents including arrest warrants and court verdicts. It documented the cases of 14 individuals from Badinan (three journalists and 11 civil society and political activists), all arrested between August and October 2020 - and found that in all cases, Asayish (KRG’s primary security and intelligence agency), and *Parastin* forces (intelligence agency of the Kurdistan Democratic Party - KDP) had arbitrarily arrested, detained, and in six cases, disappeared, individuals, in connection to their participation in protests, criticism of local authorities or to their journalistic work.

All 14 individuals were held incommunicado for periods ranging between a few days to five months; six were subjected to enforced disappearance - a crime under international law, for periods of time ranging between 10 days to over three months. Of the 14 individuals, three were released but went into hiding for fear of renewed reprisals and one went into hiding after receiving threats; five remained in detention without charge or known charges; and five individuals were sentenced to six years in prison following an unfair trial. Amnesty International further documented four instances of harassment or intimidation of family members of these individuals in detention or hiding, including by arrest and verbal threats.

VIOLATIONS OF DUE PROCESS: ARBITRARY ARREST, DETENTION AND ENFORCED DISAPPEARANCE

In all 14 cases which Amnesty International documented for the purpose of this statement, Asayish forces arrested the individuals from their homes or places of work without a warrant or any other official communication clarifying the reason of arrest. All the men were held incommunicado for periods ranging between a few days to five months. The five who remained in detention were still unable, at the time of writing, to meet their lawyers.

In six cases, Asayish forces in Duhok and Erbil denied having custody or information on the whereabouts of the arrested individuals, despite repeated attempts by family members to locate them. Three individuals had been interrogated and released without being charged, or on bail while charges against them remained unknown, after having been detained for more than 24 hours; five remained in detention without or with unknown charges at the time of writing. Three individuals who remained in custody were only allowed to phone their families sporadically, with the duration ranging between two weeks to 37 days. All three reported being held in crowded rooms with little food. In one case, Asayish forces completely undressed the individual, who was made to remain undressed during the length of the interrogation.

Suleiman Kamal Suleiman is a real estate agent and an activist. On 6 September 2020, Suleiman did not return home. His family found out that he had been arrested by Asayish forces in Akre, Duhok; they started searching for him, inquiring

¹ Also see Rudaw, At least 100 arrested in Duhok ahead of protest against government wage delays: lawmaker, May 2020 <https://www.rudaw.net/english/kurdistan/160520201>

with both Asayish Duhok and Asayish Erbil. It was not before three months and 20 days that they were finally given any information. A family member of Suleiman told Amnesty International: *“I went to Asayish Duhok countless times asking for any bit of information about him. I went to Asayish Erbil six times, they also denied having custody of him. Nobody told us where he was, or anything about him, for three months and 20 days. We were only able to hear his voice five months later... He told us ‘I am being psychologically tortured’.”*

Asayish Erbil finally called Suleiman’s family to inform them they were detaining him at their Erbil station. Two months later (i.e., five months after his arrest), Suleiman was finally allowed to call his family; since then, he has only been able to speak with his family once a month. At the time of writing, he had not been able to see or speak to a lawyer.

Furthermore, in October 2020, Asayish forces in Duhok and Erbil arbitrarily arrested three activists and two journalists. Three of them were subjected to enforced disappearance, where their detentions were followed by a refusal to acknowledge the deprivation of liberty or by concealment of their fate or whereabouts, for periods of time ranging between two to three months. In one case, the individual was held in solitary confinement for 68 days - which could also amount to torture. The five individuals were later sentenced in a largely unfair trial on 16 February 2021 (see section below on charges). All five individuals were only able to contact their family twice at most before their trial, and only two of them were allowed a one-time visit from their family in the presence of security forces.

A case of arbitrary arrest and ill-treatment is that of journalist Sherwan Sherwani. On 7 October, armed members of the Erbil Asayish, as well as local Erbil police, surrounded his home at approximately 4:30pm and forced the family members to stay in one room in the house, as they proceeded to raid the house, confiscating his laptop, camera and phone, and documents, before putting him in handcuffs. They held a gun to his head as he was dragged out of his home. When asked about an arrest warrant, an Asayish member in civilian clothing presented a handwritten document in Arabic that stated the order to arrest Sherwani, but without clarifying the charges under which he was being arrested.

According to his lawyer and family, Sherwani was placed in solitary confinement for 68 days between October and December and was subjected to humiliating treatment and threats, including of “raping his wife in front of him.” A family member was able to see him briefly after his release from solitary confinement, and reported that he looked sickly, pale and having lost much weight.

An example case of an individual who had also been subjected to enforced disappearance, this time for a period of two months, is journalist Ghudar Zebari. In the early morning of 22 October 2020, Asayish forces arrested him from his sister’s home in Duhok province, in what witnesses to the arrest described as a “brutal and inhumane”, with failure to present a warrant, and handcuffing him and confiscating his electronics. *“We went to Asayish Duhok and Erbil multiple times asking about him. I can’t even remember how many times. But they didn’t tell us anything,”* said Zebari’s family member.

Asayish authorities withheld information of Zebari’s whereabouts for two months after his arrest, when he was able to call his family and inform them of his whereabouts. Zebari’s family were only able to visit him once during his detention, in the presence of security forces. Zebari told his family that he was being held in dire conditions and was subjected to torture and other ill-treatment; he looked pale and having lost a lot of weight.

VIOLATIONS OF THE FUNDAMENTAL PRINCIPLES OF FAIR TRIAL

On 16 February 2021, the second Erbil Criminal Court sentenced the five activists and journalists Sherwan Sherwani, Guhdar Zebari, Hariwan Issa, Ayaz Karam and Shvan Saeed, to six years each, over acts deemed to be prejudicial to the security and sovereignty of the KR-I. They were accused of “spying on account of foreign actors; of having supplied the Kurdish Workers Party (PKK) with sensitive information; placed the lives of senior Kurdistan regional authorities and foreign officials at risk by gathering information about them; and collected arms with the intention of supplying them to an unidentified armed group”. Their trial was marred by serious violations of their right to a fair trial, including concerns around sentences based on statements extracted under duress, failure to provide in a timely manner the case documents allowing defense lawyers to adequately prepare their defense, and failure to order investigations into the defendants’ claims of torture. Their families were not allowed to attend the sessions.

According to lawyers and to the United Nations Assistance Mission on Iraq (UNAMI), who attended the hearings, all five defendants claimed in court that Asayish had extracted their “confessions” under torture.² “

² Office of the United Nations High Commissioner for Human Rights, Freedom of Expression in the Kurdistan Region of Iraq, May 2021 https://www.ohchr.org/Documents/Countries/IQ/Freedom-of-Expression-in-the-Kurdistan-Region_En.pdf

In eight of the cases documented, individuals were reportedly made to sign confessions or confess on video-tape under duress. *“Do not believe what is said on the video. When you see it, know that this was not me. I didn’t do anything. They [Asayish] made us do it,”* Suleiman Kamal Suleiman told his family over a phone call in reference to a video-taped “confession” which he maintains was extracted under duress. In the case of the five sentenced individuals, the court then relied on these so-called “confessions,” as well as documents found on the electronic properties confiscated, as well as on two informants – one of whom remained anonymous. In one case, the sentenced individual faced additional charges of defamation for his claims of torture made in court. But the judge dismissed all these claims and ignored a range of procedural violations which the defense lawyer raised during the hearing.

No lawyers in the cases were given access to the case files ahead of the hearing in time to prepare an adequate defense. In fact, in all five cases, lawyers were only granted access to their clients' minutes before their trial. The defense was also not given an opportunity to challenge evidence presented by the witness testimonies: The court relied on two main witness testimonies, one of them was a secret informant. The anonymous witness did not appear in court despite the lawyer’s request and judge’s order. In addition, Sherwani’s lawyer was only given access to the case files one day before the start of the trial, giving him no sufficient time to adequately prepare a defense. Using information obtained from Sherwani’s electronic devices, the main evidence brought against him in court was the creation of a messenger group, which he was accused of creating for espionage purposes and for sharing sensitive governmental information.

In correspondence with Amnesty International in March 2021, the Office of the Coordinator for International Advocacy (OCIA) of the Kurdistan Regional government claimed that the “convictions were not related to their [the journalists] journalistic work”. However, after revision of the evidence, Amnesty found that the chat group was indeed used for journalistic work.

According to Sherwani’s lawyer and to UNAMI, in separate but related proceedings, the Asayish directorate in Erbil filed charges of defamation under article 403 of the Penal Code against Sherwan Sherwani based on the statement made during trial as part of his defense, to the effect that he was tortured by Asayish. By initiating these proceedings, the authorities appear to be instrumentalizing the legal system to prevent individuals from seeking their fundamental right to a fair trial and more generally to intimidate and silence criticism. The effects of which is discussed in further in the section below.

FEAR AND INTIMIDATION

Amnesty International considers that the arbitrary arrest, detention, enforced disappearance, prosecution and threat of prosecution has instilled an atmosphere of fear amongst journalists and activists in the KR-I, specifically in Duhok. The organization has documented four instances of intimidation of individuals directly related to the victims of the most recent crackdown on freedom of expression in Duhok, by way of threats of prosecution, and verbal threats against family members or lawyers working on the case. Four individuals fled their hometown out of fear of arrest.

On 7 February 2021, a group of family members were holding a protest in front of the United Nations office in Erbil to demand the release of their relatives. Police officers, as well as Parastin intelligence forces, arrested dozens of family members at the protest. Amnesty International spoke to seven family members; all of them were held for prolonged periods of time ranging between seven to 10 hours in crowded cells with no access to food or water. They all told Amnesty International that they were held with at least 70 individuals in the police station, including underage boys and girls. In one case, the individual was forced to sign a statement stipulating that he had been “participating in demonstrations affecting the security and safety of Erbil”.

Amnesty International obtained information indicating that arrest warrants were being issued against family members or activists, in connection with the five sentenced journalists and activists. The organization obtained two copies of arrest warrants and one lawyer confirmed an arrest warrant issued in the name of another activist. All four individuals fled their hometown out of fear of arrest. In two cases, the family members of individuals who have fled their hometowns had been receiving verbal threats of “disappearing” or “killing” their respective family members.

Furthermore, a few days before the trial on 16 February, one of the lawyers representing the defendants told Amnesty International that an Asayish member had approached him in public asking him about the case. The lawyer interpreted this as a clear sign of threat for his connection to the case.

It is important to note that Amnesty International reached out to several family members who refused to speak publicly about the cases of their arrested loved ones for fear of retaliation by security forces. Some family members told Amnesty International that speaking to international organizations is now implicitly criminalized and puts them at risk of arrest.

APPLICABLE LEGAL FRAMEWORK

All the individuals who received known charges were charged under one of the three laws that contain vaguely defined and overbroad languages allowing for prosecutions over actions that are not considered to be recognizable crimes under international law. For example, Law no.21 of 2003, which governs matters of national security, could lead to lifetime imprisonment on the basis of charges defined as the “intent of infringing the security, stability and sovereignty of the institutions of the Kurdistan Region in Iraq”; Article 430-433 of the Iraqi Penal Code (Law no 111 of 1969) criminalizes defamation and defines it as “attributing an incident to an individual which could be punishable or bring them into contempt”, language vague enough that enables the pursuit of legal action against individuals peacefully criticizing public servants or institutions. Article 2 of the Kurdistan Region’s Law to Prevent the Misuse of Telecommunications Equipment – another problematic law - was also used to charge individuals for “misusing” cell phones and email and the internet more broadly, under vaguely defined and overbroad charges that are not recognized as crimes under international law.

Iraq is bound by its obligations under both international and domestic law, namely the International Covenant on Civil and Political Rights (ICCPR), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the International Convention for the Protection of All Persons from Enforced Disappearance, to which Iraq is party to, as well as Article 19 of the Universal Declaration of Human Rights. Under national law, Article 38 of the Iraqi Constitution provides that individuals must not be prosecuted for their opinions. Other than constitutional guarantees, the right to protest is further enshrined in the protest organization Law no.11 of 2010. Furthermore, the KR-I press Law prohibits press censorship, and guarantees freedom of expression and of publication, while Law No. 23 (1971) of the Iraqi Criminal Procedure Code provides safeguards from arbitrary arrest, stipulating that arrests can only be carried out with a warrant or in other cases stipulated in the law, which includes commission of an offence in front of witnesses. The arrested individual must be brought before a judge within 24 hours and has the right to be represented by a lawyer. In the case of journalists, the safeguard against arbitrary arrest is reinforced by the aforementioned press law, which explicitly provides that a journalist shall not be investigated for reasons related to the practice of his profession except in accordance with a judicial decision.

CONCLUSIONS AND RECOMMENDATIONS

Amnesty International has documented numerous examples of targeting, harassment, threatening and intimidating individuals simply for exercising their legitimate right to criticize authorities, including through the selective application of ill-defined laws to pin trumped-up, vague and overbroad charges to individuals, and the denial of fair trial rights and procedural guarantees.

Although the majority of those arrested were eventually released, the process of arrest, interrogation, and prosecution contributes to a climate of intimidation. Moreover, the violations of due process and fair trial standards that have taken place at each stage in the cases documented by Amnesty International allow a culture of impunity to continue, and leave individuals exposed to possible ill-treatment and torture.

The KRG authorities have an obligation to uphold basic human rights of freedom of expression, assembly and press freedom. In order to respect, protect and fulfill these rights, the Iraqi authorities must:

END CAMPAIGN OF INTIMIDATION

- Immediately release individuals who remain in arbitrary detention and those found guilty in unfair trials, unless they are genuinely charged with a crime recognizable under international law;
- Take immediate steps to end the practice of harassment, intimidation and reprisals against journalists, human rights defenders, activists and their family members.

END THE EXPLOITATION OF LEGAL PROCEEDINGS

- Ensure that ill-defined and vague laws are promptly amended and not used as a tool to limit freedom of expression, including by refraining from arresting and/or detaining individuals critical of the authorities;

- Amend existing laws used to govern freedom of speech, assembly and press and ensure that they are in line with relevant international human rights law and standards;
- Ensure that Law no.21 of national security is specifically circumscribed to respect the principle of legality and sets out clearly the provisions of violating a crime recognized under international law.

UPHOLD RIGHT TO FAIR TRIAL

- Ensure that any person charged with a criminal offence is afforded all fair trial rights and procedural guarantees as required under relevant international and national human rights law and standards;
- Ensure that sufficient time and resources are provided for the adequate preparation of any criminal defense;
- Ensure that the accused, through his or her lawyer, has the right to challenge the legality of the deprivation of liberty and all the evidence against him or her; the right to call and question witnesses, as well as to introduce evidence to challenge the prosecution's case;
- Ensure that statements obtained through torture or other coercion are inadmissible as evidence in any proceeding;
- Undertake prompt, effective, thorough, and impartial investigations of all allegations of torture with the aim to hold those responsible accountable and provide truth and redress to the victims.

INTERNATIONAL JUSTICE

- Take all necessary measures to bring all those suspected of criminal responsibility for arbitrary detentions, enforced disappearances, torture and other crimes under international law or human rights violations to justice in fair trials before ordinary civilian courts and without recourse to death penalty;
- Promptly recognize the competence of the Enforced Disappearance Committee to receive and consider communications from or on behalf of victims or other states parties to the International Convention for the Protection of All Persons from Enforced Disappearance;
- Accede to the Rome Statute of the International Criminal Court.